

DOCKET NO: LLICV196021431S

SUPERIOR COURT

BOYNE, SHAWN

V.

BASS MAYOR TOWN OF NEW MILFORD,
PETER Et AlJUDICIAL DISTRICT OF LITCHFIELD
AT TORRINGTON

1/19/2021

ORDER

ORDER REGARDING:

01/13/2020 118.00 MOTION FOR SUMMARY JUDGMENT

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

I. Introduction

The defendants Peter Bass (Bass) and the Town of New Milford have moved for summary judgment on both counts of the plaintiff's complaint (#118). The defendants filed a memorandum in support of this motion (#119) and a reply memorandum (#122) responding to the plaintiff's opposition papers. The plaintiff filed a memorandum in opposition to this motion (#121). The court presided over remote argument on September 16, 2020. For the reasons set forth below, the court grants the motion for summary judgment.

II. Relevant Procedural Background

The plaintiff's complaint makes the factual allegations set forth in the following four paragraphs.

The plaintiff was the police chief of New Milford from October, 2010 to October 14, 2018. Bass was the Mayor of the town during the last year of the plaintiff's employment as police chief. Throughout his employment, the plaintiff had received very positive evaluations and was highly qualified for the position. The plaintiff's initial employment was for a four-year period and the plaintiff subsequently received a second, four-year appointment. In April, 2018, the plaintiff informed Bass that the plaintiff's employment contract would expire in four months and engaged in a series of discussions with Bass concerning possible terms of employment after the plaintiff's present contract expired. Bass was complimentary about the job the plaintiff was doing as chief. In May, 2018, the two parties spoke again. At that time, Bass asked the plaintiff how long he wished to serve as chief, told the plaintiff that he was doing a "great job," and assured the plaintiff that his contract would be renewed.

In June, 2018, the plaintiff became aware of potential criminal misconduct on the part of a police lieutenant. The plaintiff informed Bass of this, told Bass that the matter had to be investigated and forwarded information to the state's attorney's office for an investigation and possible criminal charges. On July 9, 2018, the plaintiff sent Bass additional information supporting the potential charges against the lieutenant. At that time, Bass indicated his displeasure with the fact that the plaintiff had forwarded this information to the prosecutor's office. The plaintiff reminded Bass that the plaintiff had a legal and moral obligation to do so. The plaintiff then placed the lieutenant on administrative leave pending the investigation.

On July 19, 2018, Bass told the plaintiff that his employment contract would not be renewed when it expired on October 14, 2018. Bass claimed that he wanted a police chief who lived in New Milford. On the same day, however, the Town posted the police chief position. The job requirements did not include residency in New Milford. After reviewing the posting, the plaintiff told someone named Bollaro that the plaintiff wished to be considered for the job as police chief, as he was qualified and as there was no

residency requirement. The plaintiff also told Bollaro that he would establish residency if need be. The plaintiff was told that his application would not be considered.

The plaintiff's employment terminated on October 14, 2018. On November 15, 2018, New Milford hired Spencer Cerruto, a Torrington resident, to be police chief. Bass and the Town Council have not required Cerruto to move to New Milford.

The plaintiff's complaint sounds in two counts: breach of the covenant of good faith and fair dealing and promissory estoppel.

In support of the first count, the plaintiff makes the following allegations. The plaintiff claimed that he had every reason to believe that his employment would be extended because he had impeccable credentials, had performed his duties extremely well and Bass had led the plaintiff to believe his employment will continue, at least until the plaintiff reported the alleged improprieties of the lieutenant. Instead, the defendants declined, in bad faith, to extend and renew the plaintiff's contract as chief, based on Bass's desire to protect the lieutenant. Bass concocted the residency requirement as a pretext for his bad faith. The residency requirement pretext was itself made in bad faith, since the Town hired, as the plaintiff's successor, a police chief who does not live in town, and the town has never required him to do so. The defendants acted in further bad faith by declining to consider the plaintiff's application, and by failing to renew the plaintiff's contract, when the plaintiff was fully qualified for the job. The defendants breached the covenant of good faith and fair dealing "with respect to Plaintiff's employment contract." In support of the second count, the plaintiff posits the following allegations. The plaintiff began to engage Bass in discussions in April, 2018, six months before his present contract was to end, to ascertain whether he should begin to look for alternative employment. The defendants expressly and impliedly promised the plaintiff that his contract would be renewed. The plaintiff relied to his detriment on these promises by failing to pursue, from April to August, 2018, other, available employment opportunities, which were, then lost to him. August, 2018 was when the defendants informed the plaintiff that they would not consider his application, even though he was qualified for the position.

The plaintiff claims that both the breach of the covenant of good faith and fair dealing and his reliance on the promises of the defendants caused him damage. The plaintiff seeks legal and punitive damages.

III. Legal Discussion

A. Summary Judgment Standard

"Summary judgment shall be rendered forthwith if the pleadings, affidavits and other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party." (Citation omitted; internal quotation marks omitted.) *Vendrella v. Astriab Family Ltd. Partnership*, 311 Conn. 301, 313, 87 A.3d 546 (2014). "In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue." (Internal quotation marks omitted.) *Rompney v. Safeco Ins. Co. of America*, 310 Conn. 304, 319-20, 77 A.3d 726 (2013). Conversely, "[a]lthough the moving party has the burden of presenting evidence that shows the absence of any genuine issue of material fact, the opposing party must substantiate its adverse claim with evidence disclosing the existence of such an issue." *Haesche v. Kissner*, 229 Conn. 213, 217, 640 A.2d 89 (1994). Therefore, "[t]o oppose the motion for summary judgment successfully, the nonmovant must recite specific facts . . . which contradict those stated in the movant's affidavits and documents." *Hammer v. Lumberman's Mutual Casualty Co.*, 214 Conn. 573, 579, 573 A.2d 699 (1990).

“[W]e note that [o]nly evidence that would be admissible at trial may be used to support or oppose a motion for summary judgment. . . . Practice Book § [17-45], although containing the phrase including but not limited to, contemplates that supporting documents to a motion for summary judgment be made under oath or be otherwise reliable. . . . [The] rules would be meaningless if they could be circumvented by filing [unauthenticated documents] in support of or in opposition to summary judgment. . . .

“Therefore, before a document may be considered by the court [in connection with] a motion for summary judgment, there must be a preliminary showing of [the document’s] genuineness, i.e., that the proffered item of evidence is what its proponent claims it to be. The requirement of authentication applies to all types of evidence, including writings Conn. Code Evid. § 9-1 (a), commentary.” (Emphasis in original; internal quotation marks omitted.) *Gianetti v. Anthem Blue Cross & Blue Shield of Connecticut*, 111 Conn. App. 68, 72-73, 957 A.2d 541 (2008), cert. denied, 290 Conn. 915, 965 A.2d 553 (2009); see also *Nash v. Stevens*, 144 Conn. App. 1, 15-16, 71 A.3d 635, cert. denied, 310 Conn. 915, 76 A.3d 628 (2013).

“[W]here there is definitive contract language, the determination of what the parties intended by their contractual commitments is a question of law. . . . [T]he interpretation and construction of a written contract present only questions of law, within the province of the court . . . so long as the contract is unambiguous and the intent of the parties can be determined from the agreement’s face. . . . Contract language is unambiguous when it has a definite and precise meaning about which there is no reasonable basis for a difference of opinion.” (Citations omitted; internal quotation marks omitted.) *Christian v. Gouldin*, 72 Conn. App. 14, 20, 804 A.2d 865 (2002) (appeal withdrawn February 21, 1995); see also *Poole v. Waterbury*, 266 Conn. 68, 88-89, 831 A.2d 211 (2003); *Nash v. Stevens*, supra, 144 Conn. App. 18-19.

B. The Defendants’ Arguments

In regard to count one, the defendants contend that there can be no breach of the covenant of good faith and fair dealing where there is no contract. Concerning count two, the defendants maintain that there can be no promissory estoppel in a situation in which the promisor lacks the authority to fulfill the promise made. The court shall address each item seriatim.

1. Count One: Breach of the Covenant of Good Faith and Fair Dealing

The plaintiff’s allegations of factual allegations of bad faith certainly seem nefarious, immoral and unethical. The plaintiff essentially alleges that his employment was on the road to renewal until he started to raise concerns about the possible criminal conduct of a crony of the mayor’s. The plaintiff further alleges that, as soon as the plaintiff raised these issues, Bass criticized him, created a pretext for not hiring him, namely the faux residency requirement, and informed him that his application would not be considered, in spite of his qualifications.

In Connecticut, however, actionable bad faith cannot arise in a vacuum. To put it in a different way, “[i]t is axiomatic that the . . . duty of good faith and fair dealing is a covenant implied into a contract or a contractual relationship.... The covenant of good faith and fair dealing presupposes that the terms and purpose of the contract are agreed upon by the parties and that what is in dispute is a party’s discretionary application or interpretation of a contract term.... In accordance with these authorities, the existence of a contract between the parties is a necessary antecedent to any claim of breach of the [covenant] of good faith and fair dealing.” (Citations omitted; emphasis in the original; internal quotation marks omitted.) *Macomber v. Travelers Property & Casualty Corp.*, 261 Conn. 620, 638, 804 A.2d 180 (2002). Drawing upon this legal principle, the defendants contend that the only contract in effect was the written contract which expired on its own terms on October 14, 2018 and contained no provision guaranteeing renewal.

The plaintiff agrees with the legal principle relied upon by the defendants, and further fleshes it out by quoting from a federal district court case that cites Connecticut law. “Under Connecticut law, a plaintiff asserting a breach of the covenant of good faith and fair dealing must prove three elements: “first, that the plaintiff and the defendant were parties to a contract under which the plaintiff reasonably expected to receive certain benefits; second, that the defendant engaged in conduct that injured the plaintiff’s right to receive some or all of those benefits; and third, that when committing the acts by which it injured the plaintiff’s right to receive benefits he reasonably expected to receive under the contract, the defendant

was acting in bad faith.” *Franco v. Yale University*, 238 F.Supp.2d 449, 455 (D.Conn.2002). April 16, 2020 plaintiff’s opposition to motion for summary judgment, at 5. The plaintiff’s response to the defendants’ argument is that he had a contract in effect prior to the expiration of the 2014—2018 written contract. The plaintiff maintains that he and the defendants were parties to a contract under which he reasonably expected to receive the benefit of reappointment, based on the encouragement he received from Bass in the months before July, 2018, the fact that the plaintiff and Bass had discussed contract-renewal terms that included a two-year minimum term and a salary freeze, and the fact that that Town Council members universally supported the plaintiff. According to the plaintiff, the factual allegations described above of how Bass came to change his mind constituted a violation of the covenant of good faith and fair dealing of that contract.

The plaintiff’s arguments require the court (1) to analyze the existing 2014—18 written contract of employment and (2) to decide if the conversations between Bass and the plaintiff constituted a contract.

a. The 2014—18 Written Contract of Employment Does Not Support a Claim of Bad Faith

As set forth above, “[W]here there is definitive contract language, the determination of what the parties intended by their contractual commitments is a question of law. . . . [T]he interpretation and construction of a written contract present only questions of law, within the province of the court . . . so long as the contract is unambiguous and the intent of the parties can be determined from the agreement’s face. . . . Contract language is unambiguous when it has a definite and precise meaning about which there is no reasonable basis for a difference of opinion.” (Citations omitted; internal quotation marks omitted.) *Christian v. Gouldin*, 72 Conn. App. 14, 20, 804 A.2d 865 (2002) (appeal withdrawn February 21, 1995); see also *Poole v. Waterbury*, 266 Conn. 68, 88-89, 831 A.2d 211 (2003); *Nash v. Stevens*, supra, 144 Conn. App. 18-19.

The plaintiff attached his 2014—18 employment contract to his opposition to the summary judgment. Upon review of this contract, the court finds it to be simple, straightforward and unambiguous. The 2014—18 contract provides that Bass appointed the plaintiff as police chief and that the Town Council approved the appointment. This contract further states that Bass proposed the contract and that the Town Council approved it. It sets forth the plaintiff’s duties as police chief, as well as his compensation and perquisites. Most importantly, for this decision, it clearly posits the term of the contract: the contract term runs from October 15, 2014 through October 14, 2018.

The gravamen of the plaintiff’s claim of bad faith is that, based upon the actions and words of the defendants, the plaintiff expected his employment contract to be “renewed” or “extended.” For example, the plaintiff alleges that he “had every reason to expect and believe, based on his excellent performance as Police Chief over eight (8) years and the statements made by Bass prior to the disclosures about Bass’s friend, Lt. Ash, that his employment contract would be renewed and extended for another four year term.” (Complaint, para. 21). There is, however, no support for the concept of either a contract renewal or extension in the 2014—18 contract. Although the contract contains provisions permitting both parties to terminate the plaintiff’s employment early, based on certain criteria or actions, the contract includes no such provision positing reappointment, “renewal” or “extension” of this contract on proof of good performance or, for that matter, on any terms. As tomorrow is promised to no man or woman, so, too, the 2014—18 contract did not promise the plaintiff employment at any time after it expired on October 14, 2018.

In sum, the 2014—18 contract sets forth the term and length of employment for the plaintiff as police chief. By necessary inference, the plaintiff would not have the job of police chief after October 14, 2018 unless he were to enter into another contract with the defendant Town. There is nothing in the written 2014-18 contract that would support a claim by the plaintiff that he would “reasonably expect[] to receive [the] certain benefits” *Franco v. Yale University*, 238 F.Supp.2d 449, 455 (D.Conn.2002) of contract reappointment, renewal or extension. Therefore, the 2014-18 contract cannot provide the necessary prerequisite for a claim of breach of the implied covenant of good faith and fair dealing.

c. The Actions and Discussion of Bass Do Not Constitute a Contract

As mentioned above, the plaintiff maintains that he had an agreement for his contract to be renewed.

Plaintiff contends that he and the Defendants were parties to a contract under which he reasonably expected to receive the benefit of reappointment, based on the following facts: (1) the plaintiff had been reappointed in 2014, (2) Bass had praised and encouraged him, (3) Bass had reassured him, and (4) the plaintiff and Bass had discussed terms of a contract, such as a two-year minimum term and a salary freeze. This argument is premised, however, on further claims by the plaintiff that Bass, as mayor, had the power and authority to appoint the police chief, subject “only to ratification by the Town Council, whose members universally supported the Chief.” April 16, 2020 plaintiff’s opposition to motion for summary judgment, at 5. Under many scenarios, the court would have to decide whether a contract had been formed based upon these facts. Under this scenario, however, that analysis is unnecessary, because Bass, as mayor, lacked the authority to enter into a contract with anyone without the vote of a majority of the Town Council.

In their reply, the defendants submitted a certified copy of the operative town charter. The court may take judicial notice of a town charter. See *State v. Lindsay*, 109 Conn. 239, 241-242 (1929) (“From the charter of the city of New Haven, of which we take judicial notice....”); accord *163 East Ave. Corp. v. Estate of Seckar*, 4 Conn. Cir. Ct. 432 (Conn. App. Ct. 1967), as of any town ordinances and regulations. Conn. Gen. Stat. Sec. 52-163 (3), (4). Section 901, Police Department, of the town Charter provides, in pertinent part, that the “Mayor, with the approval of the Town Council, shall appoint a Chief of Police for a definite term not to exceed four years, and upon the expiration of any such term, may reappoint the Chief of Police in like manner for successive terms not to exceed four years each.” Charter, Town of New Milford, General Code, Sec. 901.

This charter provision is clear. Upon reappointment, the mayor may only reappoint a police chief “in like manner” to how the mayor initially appointed a police chief, e.g., with the approval of the Town Council. This conclusion is reinforced by the 2014—18 contract, discussed *supra*, which was, itself, a renewal of the plaintiff’s 2010—14 contract of employment.

The preamble of the 2014—18 contract specifically stated, “WHEREAS, Section 901 of the New Milford Charter confers the general management and supervision of the New Milford Police Department on the Mayor, acting through the Chief of Police; and WHEREAS, Pursuant to said Section 901 Shawn M. Boyne has been appointed by the Mayor as Chief of Police of the Town of New Milford and the New Milford Town Council (“Town Council”) has approved such appointment; and... WHEREAS, the Mayor has proposed and the Town Council has approved this contract....” A necessary prerequisite for any contract between the New Milford mayor and its police chief is the approval of the Town Council. As a result, Bass, as mayor, lacked the authority to enter into a contract with the plaintiff to serve as police chief absent the vote of a majority of the Town Council. Therefore, the discussions or actions of the mayor, absent a majority vote of the Town Council, could not provide a contractual antecedent from which the plaintiff could prove a breach of the implied duty of good faith and fair dealing. [FN 1]

There is no genuine issue of material fact as to the court’s conclusions that neither the written 2014-18 contract of employment nor a claimed verbal contract based on discussions between the plaintiff and Bass could provide the contractual foundation upon which to base a claim of breach of the implied covenant of good faith and fair dealing. Therefore, the court grants the motion for summary judgment as to count one.

2. Count Two: Promissory Estoppel

The plaintiff also claims that statements of Bass, set forth above, made to the plaintiff between April and June of 2018, create a situation in which promissory estoppel applies. Even assuming that Bass made the alleged statements, no exhaustive review of the law of promissory estoppel is necessary because the plaintiff cannot prevail on the essential element of reasonable reliance.

Under applicable Connecticut law, a “fundamental element of promissory estoppel...is the existence of a clear and definite promise which a promisor could reasonably have expected to induce reliance. Thus, a promisor is not liable to a promisee who has relied on a promise if, judged by an objective standard, he had no reason to expect any reliance at all.” (Citations omitted; internal quotation marks omitted.) *D’Ulisse-Cupo v. Board of Directors of Notre Dame High School*, 202 Conn. 206, 213, 520 A.2d 217

(1987). Therefore, the promisee's reliance on the so-called promise must be reasonable, and the reasonableness thereof is judged by an objective standard.

As set forth supra, in section 1. b. of this decision, under the New Milford charter, the mayor lacks the authority to enter into a contract with a police chief unless the Town Council votes to approve this action. This provision is clear and unassailable. Our Supreme Court has held that "every person who deals with a municipal corporation is bound to know the extent of its authority and the limitations of its powers." *Fennell v. Hartford*, 238 Conn. 809, 814. An objective person, therefore, would have known that Bass lacked the authority to promise that the Town would enter into another employment agreement with the plaintiff. In further support of this conclusion are two sets of facts.

First, as set forth above, the 2014-18 contract was the second contract that the plaintiff entered into with the Town to serve as police chief. The 2014-18 contract's preamble recited both that the mayor had appointed the plaintiff and the Town Council had approved this appointment and that the mayor "proposed" and the Town Council "approved" this contract. Therefore, the plaintiff clearly knew that the mayor's say-so, even assuming it was given, was not binding, absent a majority vote of the Town Council.

Second, in response to the deposition question, "[a]nd after you negotiated those [contract terms], did you contract have to go to the Town Council to be approved?" the plaintiff answered simply, "Yes." Exhibit B to memorandum in support of motion for summary judgment, plaintiff's deposition, 45:12—45:14.

Under the uncontested facts of this case, the plaintiff cannot prove that he reasonably relied on any alleged promises of Bass.

IV. Conclusion

For the above-stated reasons, the court grants the motion for summary judgment.

[FN 1] The plaintiff's reliance on past votes of the Town Council is only speculative as to what the vote of the Council may have been in 2018, since no vote was ever taken in 2018.

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Judge: JOHN DAVID MOORE

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